

WISHA REGIONAL DIRECTIVE

WISHA Services

Department of Labor and Industries

2.07

Closing Conferences

Date: May 17, 2005

I. Background

Upon completion of a WISHA compliance inspection, enforcement staff typically conduct a closing conference with employer and employee representatives to discuss any hazards that were identified during the walk-around inspection, citations that are being considered and reasonable abatement dates for citations that may be issued. Various informational forms for the employer and employee representatives have been developed for enforcement staff to use during the closing conference. These forms, often called "Closing Conference Highlights," cover topics including the nature of the proposed violations, abatement dates and the rights and duties of the employer.

WISHA policy requires all citations be reviewed and approved by the supervisor prior to issuance of the citation. In some cases, inspection findings require the review by staff from WISHA Services and other regional representatives prior to citation issuance. This policy has been written to ensure consistency regarding when and how information will be provided to an employer at a closing conference.

II. Scope and Application

This WISHA Regional Directive (WRD), which will remain in effect indefinitely, provides guidance to WISHA enforcement staff on the use of the "Closing Conference Highlights" form during an inspection. This WRD replaces all previous guidance on the issue whether formal or informal.

III. Application Guidance

- A. *Can I provide the employer with a Closing Conference Highlights form during the inspection?*

Routine inspections: A routine inspection is defined as any inspection that is not listed on the significant cases list and all inspections that do not require a WISHA Services review.

The attached Closing Conference Highlights form (appendix A) may be used at the conclusion of a routine inspection. The form must always be identified as "**proposed violations**" and the compliance officer must inform the employer and employee representatives that the inspection findings are subject to further review. If there are any changes resulting from the review of the inspection findings, enforcement staff should call the employer and notify them of the changes.

Non-Routine Inspections: These are defined as inspections listed on the significant cases list or inspections which require WISHA Services or AGO review prior to citation issuance.

No closing conference shall be conducted with the employer or employee representatives on these types of inspections until regional staff and WISHA Services staff have completed the final review. The decision on how to handle the closing conference will be made during the final review meeting.

B. Can I create my own Closing Conference Highlights form?

No, in order to standardize the process of providing written information to an employer and employee representatives at the closing conference, the attached Closing Conference Highlights form is the only one approved for use.

Approved: _____

Mel James, Acting Senior Program Manager
WISHA Policy & Technical Services

For further information about this or other WISHA Regional Directives, you may contact WISHA Policy & Technical Services at P.O. Box 44648, Olympia, WA 98504-4648 or by telephone at (360) 902-5503. You also may review policy information on the WISHA Website (<http://www.lni.wa.gov/safety/>).

APPENDIX A

CLOSING CONFERENCE HIGHLIGHTS PROPOSED VIOLATIONS

Employer: _____

This closing conference is held to discuss the inspection findings and any hazard(s) discovered during the inspection. During this conference a discussion will occur on the actions necessary to abate any hazard(s) discovered and the date by which they must be corrected/abated. The department routinely allows employee representatives to be present during the closing conference. However, either the employer or the employee representatives may request separate closing conferences. In accordance with WAC 296-800-35012, employees or their representatives may request copies of Citation and Notices issued to the employer.

Citation & Notice (C&N):

You will receive a Citation and Notice containing the alleged cited violation(s) and the date that the alleged violation(s) must be abated/corrected by. Any alleged violations cited as serious will have a monetary penalty as required by RCW 49.17.180. The findings of this inspection and the recommendations of the inspector are subject to change prior to C&N issuance.

<u>Classification</u>	<u>Hazards/Items To Correct</u>	<u>Abatement Date</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Posting Requirements (WAC 296-800-35016)

You must post the Citation and Notice for three (3) working days, or until the last violation has been corrected, whichever is longer. **YOU MUST COMPLY WITH THESE POSTING REQUIREMENTS EVEN IF YOU APPEAL THE CITATION**, or if no violations were noted.

Your Rights As An Employer (RCW 49.17.140 and WAC 296-800-35076)

You have fifteen (15) working days from the date you receive your Citation and Notice to file a written appeal. You may appeal all or part of any alleged violation including the violation, penalty or abatement date.

Your Notice of Appeal must include the Business name, name, telephone number; the name and address and telephone number of any person representing you; the citation number; what you think is wrong with the citation or corrective notice and any related facts; what you think should be changed and why. You should also state whether all the violations on the citation, or just specific violations, or only the penalties, are being appealed.

Labor and Industries has the option to forward the appeal to the Board of Industrial Insurance Appeals, an independent state agency, or to reassume jurisdiction and hold an informal conference to try and resolve the citation.

At the informal conference you should be prepared to briefly explain your reasons for the appeal and be ready to provide any additional information you would like the department to consider.

Employees may appeal only the abatement date.

Employer Certification of Hazards Corrected (WAC 296-800-35042)

An Employer Certification of Hazards Corrected form will be included with the Citation and Notice you receive. The form requires that you certify that each of the violations has been corrected and that affected employees and their representatives have been informed of the abatement activities. The form is also used by the department to track compliance with the violation(s) cited.

If the Compliance Inspector requests more documentation of abatement for willful, repeated or serious violations, you must furnish the additional documentation in accordance with the citation and notice and WAC 296-800-35044. This documentation may include, but is not limited to information such as photographs, copies of written programs, or training records, evidence of purchase/repair, or other written documents.

If there are multiple sets of abatement dates, updated copies must be submitted for each set of dates. Failure to submit the Employer Certification of Hazards Corrected can trigger a follow-up inspection and/or additional penalties.

Extension of Abatement Dates (WAC 296-800-35056)

When a violation cannot be corrected by the agreed upon abatement date, an extension may be requested. The extension request must be submitted in writing prior to the abatement date and contain the elements outlined in WAC 296-800-35056.

Follow-up Inspection and Failure to Abate

If you receive a C&N, a follow-up inspection may be conducted to verify that the citation was posted, the violations were corrected, and the employees were adequately protected during the abatement period. Violations that have not been corrected by the set abatement date or extended abatement date are subject to an additional citation for Failure to Abate, with additional penalties assessed.

In addition, the Washington Industrial Safety and Health Act (WISHA) clearly states that you have a continuing responsibility to comply with the Act and to provide a safe and healthful workplace for employees. (RCW 49.17.060)

Employee Discrimination (RCW 49.17.160 and 296-360 WAC)

By law, your employees must be allowed to participate in the WISHA inspection. They must be paid for the time they spend assisting the Compliance Inspector or doing related activities. They may not be fired, demoted, or otherwise discriminated against if they talk to the Inspector, file a complaint about unsafe or unhealthy working conditions, or exercise any other right protected under the Act.

If you have any questions concerning the inspection, please contact the Compliance Inspector, or the supervisor.

For additional information about WISHA and the various programs available, you may visit our web site at <http://www.lni.wa.gov/safety>